IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1497 OF 1985

Mr.Shyam Sunder Bubna, of Bombay)
Indian Inhabitant residing at 29-A)
Balaram Street, Bombay - 400 007.)...Plaintiff

V/s.

1. M/s.Savani Transport Private)
Limited, a private limited)
company within the meaning of)
the Companies Act 1956 and)
having its registered office at)
163, P.D'Mello Road,)
Bombay - 400 001)
General Administrative office)
at Broadway Shopping Centre,)
2nd Floor, Dadar, Bombay-14.)
)
2. Akhtar Husain, Branch Manager)
of Savani Transport Private)
Limited having his office at)
Savani Transport Pvt.Ltd.,)
Broadway Shopping Centre,)
Dadar, Bombay - 400 014.)...Defendants.

Ms.Mrudula Bhatia i/b. M/s.Poddar & Co. for Plaintiff.

Smt.B.J. Singh alongwith J.P. Singh for Defendants.

CORAM : A.S. AGUIAR, J.

DATED : APRIL 26/27, 2005.

ORAL JUDGMENT :-

1. This suit was earlier filed as Pauper Petition

No.13 of 1983 as the petitioner/plaintiff sought leave to sue the respondents as an indigent person. An inquiry was held regarding the pauperism of the petitioner. The petitioner thereupon volunteered to pay court fees on the claim amount and accordingly, the petition has been converted into a suit. In the suit, the plaintiff prays for an order and decree directing the defendants to pay to the plaintiff a sum of Rs.2,50,000/- together with interest for having maliciously prosecuted him and causing damage to his reputation and business.

2. The case of the plaintiff, as set out in the plaint, is that the plaintiff is carrying on business as trader and commission agent in Bombay. The plaintiff has a good reputation in public and in the business community. The plaintiff intervened in a dispute between defendant no.1 company and one Kailashchand Agarwal, a relative of the plaintiff to bring about a settlement. At the request of the first defendant, plaintiff issued twelve cheques in favour of defendant no.1 for Rs.1000/- each and one cheque for Rs.1,046.14 with a specific understanding that each of the cheques would be encashed only in case of failure of

Kailashchand Agarwal, the principal debtor, to make payment to the defendants and the same was communicated to the plaintiff to enable the plaintiff to arrange for sufficient funds in his bank account. It is the case of the plaintiff that the said first defendant without informing the plaintiff and without his consent, presented two cheques of Rs.1000/- each to plaintiff's bank taking the plaintiff by surprise. The said cheques were returned unpaid for insufficient funds in the bank account. Thereupon the plaintiff paid a sum of Rs.2000/- on or about 13th June, 1978 by pay order (Exhibit P-3). On 9th August, 1978, defendants filed a criminal complaint against the plaintiff and said Kailashchand Agarwal in the Court of Special Metropolitan Magistrate, Kanpur. It is the case of the plaintiff that the said case is false and malicious and filed only with a view to harass the plaintiff. Furthermore, it is contended that with the said motive in mind, the defendants went on taking adjournment one after another on one pretext or the other, but failed to produce any evidence before the Court. Further, on 7th October, 1978, defendants wrongly and maliciously caused to be issued a warrant of arrest against the plaintiff. On account of the said warrant, the plaintiff was put to

great hardship as he had to arrange to get himself bailed out by providing surety.

3. According to the plaintiff, the said case being a criminal complaint, his personal presence was required at Kanpur Court for which purpose he had to travel several times to and fro between Kanpur to Bombay and had to spent considerable time and energy in preparing the defence and instructing his Advocates at Kanpur. Plaintiff claims that he has suffered physical and mental torture on account of filing of the said false criminal complaint and this resulted in adversely affecting his business as well as his family life.

4. The said criminal complaint was ultimately dismissed and the plaintiff and the said Kailashchand Agarwal, the principal debtor, were discharged by the learned Magistrate on 28th July, 1982. The Magistrate in the said order while discharging the plaintiff observed that the complainant had taken several dates for production of evidence under Section 244 Cr.P.C. and that on the last occasion, he was given last opportunity to produce his evidence and in view of the failure of the complainant to produce the said evidence,

his application for further adjournment was rejected. The plaintiff and the said Agarwal were discharged on the ground that no prima facie case under Section 420 was made out and hence, no charge could be framed against them.

5. It is the case of the plaintiff that the dispute between the plaintiff and first defendant was purely of a civil nature for recovery of alleged dues of the first defendant against the said Kailashchand Agarwal as the plaintiff had committed no offence of cheating as falsely and maliciously alleged by the complainant. It is further pointed out that at the time of filing the complaint and at the time when warrant of arrest came to be issued, the plaintiff was a candidate in the municipal election. He was very busy with the said election campaign. The issue of warrant of arrest therefore had tremendous adverse effect on his election campaign as a result of which the plaintiff suffered mental agony and torture and lost the election. In the said election campaign, the plaintiff claims to have incurred heavy expenses.

6. According to the plaintiff, he had already paid

Rs.2000/- to the defendants on 13th June, 1978 being the amount due to the complainant under the first two cheques which were dishonoured. However, the payment of Rs.2000/- was deliberately suppressed and not disclosed in the Criminal compliant. Further, after filing the criminal complaint, defendant no.1 did not inform the plaintiff of the filing of the said complaint nor served a copy of the complaint upon the plaintiff and further despite having filed criminal complaint, first defendant obtained from the plaintiff a further sum of Rs.1000/- by demand draft dated 4th September, 1978 by keeping the plaintiff in the dark about the filing of the criminal complaint at Kanpur.

7. The plaintiff points out that the first defendant had also filed a civil suit in the Bombay City Civil Court being Suit No.6125 of 1981 against the plaintiff and said Kailashchand Agarwal falsely claiming the sum of Rs.22,546.10. The said suit is pending. In the said suit also, the defendants have not given credit to the plaintiff for sum of Rs.3000/- received by them, as aforesaid, nor have the defendants given credit to the said Agarwal for the sum of Rs.8000/- paid by the said Agarwal.

8. It is the case of the plaintiff that he has physically, mentally and financially suffered on account of the false and malicious case filed by the defendants and is, therefore, entitled to damages for the mental and physical torture and loss of reputation in the sum of Rs.2,00,000/- as well as a sum of Rs.50,000/- towards monetary loss suffered by him.

9. Defendants have filed their written statement dated 11th June, 1990 taking up several defences interalia that this Court has no jurisdiction to try the suit as the prosecution was launched at Kanpur and the order of discharge is passed by the Special Metropolitan Magistrate, Kanpur. On merits, defendants have submitted that on the plaintiff giving a guarantee and issuing 13 cheques in favour of the defendants, the defendants refrained from proceedings against the said Kailashchand Agarwal, a relative of plaintiff. It is the case of the defendants that the plaintiff knew and was aware that the 13 cheques given by him, would not be honoured and was therefore guilty of making a false representation to the defendants that his cheques would be honoured. Relying on the representation of the

plaintiff, the defendants did not adopt criminal action against said Kailashchand Agarwal. According to the defendants, the only purpose of the plaintiff making the said representation and issuing the said cheques was to save his brother-in-law Kailashchand Agarwal. The plaintiff knowing fully well that his cheques would not be honoured and the intention of the plaintiff was to cheat the defendants by misrepresentations which to the plaintiff's knowledge were false and hence, defendants were justified in filing the criminal complaint against the plaintiff in the said Court at Kanpur. The defendants have denied that with a view to harass the plaintiff, the defendants kept on taking adjournments, that defendants were in fact granted adjournments for want of time by the Court or by consent of the parties. The defendants have further denied that the plaintiff remained present in Court on all the dates of hearing or even on the adjourned dates. Defendants deny that the plaintiff had to devote considerable time and energy for preparing his defence or giving instructions to his Advocate at Kanpur. Defendants have denied that the plaintiff had to incur expenses for travelling and stay and for Advocate's fees. Defendants have denied that the plaintiff suffered any physical and mental torture

on account of the criminal case or that the plaintiff suffered at all. Defendants have also denied that the plaintiff had any business and state that the plaintiff was in fact working as a Court Clerk for his present Advocates. Defendants further deny that they filed complaint against the plaintiff merely to harass him. Defendants state that they were not aware that the plaintiff was a candidate of the municipal elections.

10. Defendants also deny that on their alleged false representations, the Court issued the warrant of arrest against the plaintiff or that the plaintiff suffered monetary loss and physically or mentally on account of the prosecution. Defendants state that the claim of the plaintiff for damages is false and deny their acts were wrongful. The defendants deny the correctness of the particulars of the claim of the plaintiff (Exhibit-B to the plaint).

11. On the basis of the pleadings as aforesaid, Issues were framed between the parties as follows :-

(1) Whether the Court has jurisdiction to entertain and try the suit as contended by the defendants

in para 1 of the written statement ?

(2) Whether the defendants have wrongfully and maliciously caused to issue warrant of arrest against the plaintiff as alleged in paragraph 2 of the plaint ?

(3)(a) Whether the prosecution of the plaintiff in Criminal Complaint No.2324 of 1980 before the Metropolitan Magistrate was malicious ?

(3)(b) Whether the said prosecution terminated in discharge of the plaintiff and whether it was held by the Metropolitan Magistrate that the said complaint simply was filed to harass the plaintiff herein ?

(4) Whether the plaintiff has suffered damages and/or damage to his reputation on account of the criminal case filed by the defendants ?

(5) Whether the plaintiff proves specific damages when he filed suit as an indigent person ?

(6) What order ?

12. So far as the question of jurisdiction is concerned, the objection to the jurisdiction of this Court to entertain the suit is without merit as the defendant admittedly carry on business in Bombay. They have a registered as well as general administrative office in Bombay as set out in the title of the plaint and the agreement dated 12th January, 1978 was signed in Bombay. These averments are not denied by the defendants and therefore, to be taken as admitted. In view thereof, as per Section 20 of the CPC, this Court certainly has jurisdiction to entertain and try the suit.

13. The main Issue that require consideration is, whether the plaintiff proves that the prosecution launched by the defendants by filing criminal complaint No.2324/80 before the Metropolitan Magistrate at Kanpur, is malicious and whether the plaintiff has suffered damages to the tune of Rs.2,50,000/- as aforesaid or at all.

14. The answer to the question whether the

prosecution filed before the Metropolitan Magistrate, Kanpur by the defendants against the plaintiff is malicious or not will depend upon several factum. Learned Advocate for the plaintiff has relied upon following judgment on the question what would amount to malicious prosecution. **In the case of State of Bihar V/s. Rameshwar Prasad Baidya and Anr., AIR 1980 Patna 267,** the Court held as follows :

> "Malice and absence of reasonable and probable cause must unite in order to produce liability. Malice in common acceptation means ill-will against a person, but in its legal sense it means a wrongful act, done intentionally without just cause or excuse. Malice signifies the presence of some improper and wrongful motive that is to say, an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. Reasonable and probable cause means a genuine belief, based on reasonable grounds, that the proceedings are justified. The defendant in an action for malicious prosecution is not required to believe that the accused is guilty; it is

enough if he believes there is reasonable and probable cause for a prosecution. He need only be satisfied that there is a proper case to lay before the Court. It may not always be possible to have direct evidence of these two requirements of a suit for malicious prosecution but the connected relevant circumstances may sometimes furnish a clue to the same.

. The court has further observed that -

"In order to succeed in an action for malicious prosecution, four conditions have to be fulfilled, namely (1) that the proceedings must have been instituted or continued by the defendant; (2) that he must have acted without reasonable or probable cause; (3) that he must have acted maliciously; and (4) that the proceedings must have been unsuccessful - that is to say, must have terminated in favour of the plaintiff now suing."

15. In the light of these observations, it is necessary for us to go through the facts as stated by

the plaintiff in his plaint and admitted and/or not denied by the defendants.

16. The plaintiff has alleged that he had intervened in the dispute between defendants and the said Agarwal as the said Agarwal was relative of the plaintiff and in order to settle the dispute, the plaintiff volunteered to guarantee the repayments of the amounts due from the said Kailashchand Agarwal to the defendants by issuing post dated cheques with a clear understanding that defendants will not encash these cheques without first informing the plaintiff of the same so as to enable the plaintiff to make necessary arrangements to have sufficient funds in his bank account when the defendants presented the post dated cheques issued by the plaintiff. There is no denial on the part of the defendants that there was an understanding between the plaintiff and defendants and defendants would not encash the cheques without first informing the plaintiff so as to enable the plaintiff to make necessary arrangements for funds in his account when the cheques were deposited by the defendants. It is the contention of the plaintiff that the defendants presented two cheques of Rs.1000/- to the plaintiff’s bank sometime in February

and May, 1978 on the due dates mentioned in the said cheques. However, the defendants did not inform the plaintiff that they were presenting the said cheques to the bank as they had not received payment from said Kailashchand Agarwal. As a result, there were no sufficient funds in the plaintiff's account when the said cheques were presented and therefore, the said cheques were returned unpaid. This allegation is no where denied by the defendants. Defendants have thereby admitted the crucial fact that they did not inform the plaintiff before presenting the said cheques so as to enable the plaintiff to make necessary arrangements for funds in his account.

17. The defendants' complaint filed in the Metropolitan Magistrate Court at Kanpur was that the plaintiff had cheated the defendant by issuing the post dated cheques knowing fully well that the said cheques would not be honoured due to lack of funds in the plaintiff's account with the bank. In view of the tacit arrangement stated above between the plaintiff and the defendants that that defendants would not encash the said cheques without first informing the plaintiff which arrangement has not been denied by the defendants, it

cannot be said that there was any intention on the part of the plaintiff to cheat the defendants. In fact, this arrangement clearly indicates that the plaintiff acted as intervenor to help his relative as well as the defendant from whom the said Agarwal took money with a view to bring about an amicable settlement and stand as guarantor in the event of the said Agarwal failing to pay his dues to the defendant. The precondition for enforcing the said guarantee was the requirement on the part of the defendants to inform the plaintiff of the failure on the part of the said Kailashchand Agarwal to pay the debts of the defendants. This was required to be done to enable the plaintiff to make necessary arrangement for funds in his bank account. By no stretch of imagination, can it be said that the plaintiff made any false representation to the defendant as a result of which defendant was cheated of his money. The criminal case filed by the defendant in the Metropolitan Magistrate Court at Kanpur ended in discharge of the accused plaintiff as no prima facie case of cheating was made out and no charges therefore could be framed as the plaintiff had failed to lead any evidence despite several adjournments. The learned Magistrate while discharging accused also noted in the

said order dated 28th July, 2002, "the case was simply to harass the accused." Thus, the case filed by the defendant before the Metropolitan Magistrate Court at Kanpur would fall within the ambit of "malicious" prosecution and the said case could be said to have been instituted without reasonable and probable cause.

18. It is an admitted fact that the defendants had also filed Civil Suit No.6125 of 1981 against the said Agarwal and plaintiff in the Bombay City Civil Court for recovery of sum of Rs.22,546.10. However, subsequently the suit against the plaintiff was withdrawn and defendants proceeded only against the said Agarwal. In the said suit filed in the City Civil Court, no credit was given by the defendants to the plaintiff for the sum of Rs.2000/- which the plaintiff paid in cash subsequent to the dishonour of the two cheques by pay order. It is also pertinent to note that although the plaintiff had paid Rs.2000/- prior to the filing of the criminal case, this fact has been suppressed in the criminal complaint. The facts of the case clearly indicate that the nature of the dispute was purely civil devoid of any criminal content and therefore, the approach to the criminal court by the defendants, that too a court at Kanpur far

away from the residence of the plaintiff, appears to have been filed clearly with a view to harass the plaintiff.

19. The law on malicious prosecution is clear. If the defendant is to be held liable, it has to be proved that the prosecution was without reasonable and probable cause and the court proceedings were instituted for an oblique and improper motive such as for bringing undue pressure upon the plaintiff to settle the dispute and, of course, the prosecution filed must have terminated in favour of the plaintiff. In the present case, it has come on record that the defendants were entitled to present the post dated cheques given by the plaintiff as guarantor for payment of amounts by the said Kailashchand Agarwal only in the event of Kailashchand Agarwal failing to pay the amounts and only after the plaintiff was informed by the defendant that he would be encashing the cheques. This was with a view to enable the plaintiff to arrange for sufficient funds in his account when the cheques were presented for payment. And admittedly in the present case, the defendant’s gave no notice to the plaintiff that they intended to encash the cheques and thus, the plaintiff had no opportunity

to deposit any amounts in his account to ensure that there were sufficient funds in his account for the cheques to be honoured. Furthermore, immediately after the plaintiff become aware that his cheques had bounced, the plaintiff paid a sum of Rs.2000/- to the defendants towards the said two cheques. However, the defendant has suppressed this fact in the complaint that he filed subsequently before the Metropolitan Magistrate at Kanpur. The defendant also filed a Civil Suit in the Bombay City Civil Court against the plaintiff and said Kailashchand Agarwal but failed to give credit to the plaintiff for the sum of Rs.2000/- that had been paid by the plaintiff to the defendants by way of pay order as also a sum of Rs.8000/- paid by Kailashchand Agarwal. Despite receipt of the same amount, the defendants chose to file the complaint against the plaintiff and Agarwal and that too in the criminal court at Kanpur. All the aforesaid facts indicate that there was no reasonable and probable cause for the defendants to have filed the criminal complaint. It further indicates the oblique motive with which the defendant filed the criminal complaint viz. to pressurise the plaintiff into paying the amounts demanded by the defendants. The Metropolitan Magistrate at Kanpur while discharging the

plaintiff and Kailashchand Agarwal, has observed that the criminal complaint was filed with a view to simply harass the plaintiff. Thus, the ingredients necessary to prove malicious prosecution are established beyond doubt and the defendants must be held to have maliciously prosecuted the plaintiff and accordingly held liable to pay damages.

20. Damages are claimed by the plaintiff under the following heads :-

1) General damages of Rs.2,00,000/- on account of the harassment and physical and mental torture caused to the plaintiff due to the malicious prosecution by the defendants.

2) Special damages of Rs.50,000/- on account of pecuniary loss suffered by the plaintiff due to the malicious prosecution by the defendants.

. The pecuniary loss is in respect of costs, charges and expenses incurred by the plaintiff for attending the hearing of the criminal case at Kanpur and by way of travelling to and fro betweem Bombay to Kanpur

and for plaintiff's stay at Kanpur during the hearing of the case and legal expenses of engaging a lawyer in defending himself in the criminal case at Kanpur.

21. It must right away be stated that the plaintiff has failed to prove the costs, charges and expenses incurred by him in attending the criminal case at Kanpur. The plaintiff has not produced even a single document to prove that he attended on all the dates or even on a single date before the Magistrate's Court at Kanpur. Even though the plaintiff was issued a warrant of arrest, he obtained bail by producing surety at Bombay itself, the warrant being a bailable warrant. The plaintiff has not produced any evidence to show that he attended the Kanpur Court on the returnable date of the warrant. On the question of lawyer's fees incurred by the plaintiff in defending himself in the criminal case filed at Kanpur, the plaintiff has produced no evidence to show he paid his Advocate Rs.15,000/- in the year 1982 as alleged by the plaintiff.

22. General damages to the extent of Rs.2,00,000/-

are claimed by the plaintiff on the ground of mental torture that the plaintiff has undergone on account of being maliciously prosecuted. It is the contention of the plaintiff that he suffered in his business due to the criminal case filed at Kanpur against him. He has suffered in his family life and his general reputation in society, especially the business community, has taken a beating. Plaintiff has further claimed that at the relevant time, he stood for election of Municipal Council, however, he lost the election as at that time, the warrant of arrest came to be issued by the criminal court at Kanpur for his non-attendance at the hearing of the criminal case and this warrant came to be issued at the instance of the defendants. It is the case of the plaintiff that he was not aware of the criminal case filed until the warrant was served upon him and he was arrested and obtained bail after his arrest. The plaintiff has in his evidence stated that neither the summons nor the complaint was served upon him. This fact has been further reiterated by the plaintiff in his cross-examination wherein he has stated "I learnt of the case filed against me by defendant at Kanpur after I was arrested pursuant to the warrant." Thus the plaintiff has established that no notice of the criminal complaint

was given to him and therefore, he could not attend the case and warrant came to be issued. According to the plaintiff, the said warrant would not have been issued as he would have attended the criminal case at Kanpur if the summons was served upon him. However, the summons was not served upon him nor was a copy of the complaint sent to him, therefore, he was unaware of the pendency of the criminal case at Kanpur and therefore, he did not attend the said case. It is the case of the plaintiff that the defendants have deliberately suppressed the fact of having filed the criminal complaint and that he paid a further sum of Rs.1000/- oblivious of the complaint having been filed. The warrant of arrest came to be issued after he made payment of Rs.1000/-.

23. The charge of the plaintiff that the warrant of arrest came to be issued at the instance of the Defendants, is doubtful. The warrant for non-attendance is issued by the Court only after the Court is satisfied that the accused has been served with the summons and despite service of the summons, the accused, in this case the plaintiff, has failed to remain present. The defendants cannot be said to have instigated or induced the Court to have issued the warrant. It is for the

Court on being satisfied that the summons was served and the plaintiff/accused failing to remain present pursuant to the summons to issue the said warrant. We therefore, see no substance in the contention of the plaintiff that the warrant was caused to be issued by the defendants.

24. The case of the plaintiff is that he suffered extreme mental and physical torture on account of issue of the warrant for his arrest specially in view of the fact that at that time he was busy in his election campaign as candidate for the Municipal Council. It is the case of the plaintiff that he lost the election due to the bad publicity he got on account of his arrest pursuant to the warrant of arrest issued by the Court. The alleged loss of elections to the Municipal Council due to the issue of the warrant is too far fetched to be accepted. No evidence has been brought on record by the plaintiff to prove the alleged loss of reputation and loss of face in society suffered by him on account of issue of warrant for his arrest.

25. Be that as it may, the issue of warrant is a consequence of the criminal complaint filed against the plaintiff. It is, therefore, necessary for us to find

out whether the prosecution itself was justified or not. If the prosecution was not justified and filed with improper motive and without reasonable and probable cause, then the defendants become liable for the harassment and torture and expenses that the plaintiff has to incur and go through on account of malafide prosecution which got aggravated by issue of the warrant for plaintiff's arrest during the pendency of the prosecution. As stated earlier, it is established beyond doubt that the prosecution was unjustified as it was without reasonable and probable cause filed with improper motive. The defendants would, therefore, be liable for damages claimed by the plaintiff. The only question is the amount of damages to be paid. On the question of damages, learned Advocate for the plaintiff has referred to the case reported in **AIR (34) 1947 Privy Council 108** wherein the Court has laid down the principle for claiming damages. **Para 16** of the said judgment reads as follows :-

> "16. The action for damages for malicious prosecution is part of the common law of England, administered by the High Court at Calcutta under its letters patent. The

foundation of the action lies in abuse of the process of the Court by wrongfully setting the law in motion and it is designed to discourage the perversion of the machinery of justice for an improper purpose. The plaintiff must prove that the proceedings instituted against him were malicious, without reasonable and probable cause, that they terminated in his favour (if that be possible), and that he has suffered damage. As long ago as 1698 it was held by Holt C.J. in 1 Ld.Raym. 374 [12] that damages might be claimed in such an action under three heads, (1) damage to the person, (2) damage to property, and (3) damage to reputation, and that rule has prevailed ever since. That the word "prosecution" in the title of the action is not used in the technical sense which it bears in criminal law is shown by the fact that the action lies for the malicious prosecution of certain classes of civil proceedings, for instance falsely and maliciously presenting a petition in bankruptcy or a petition to wind up a company:(1888) 11 Q.B.D.674 [13]. The reason why the action does not lie for falsely and

> maliciously prosecuting an ordinary civil action is, as explained by Bowen L.J. in the last mentioned case, that such a case does not necessarily and naturally involve damage to the party sued. A civil action which is false will be dismissed at the hearing. The defendant's reputation will be cleared of any imputations made against him and he will be indemnified against his expenses by the award of costs against his opponent. The law does not award damages for mental anxiety or for extra costs incurred beyond those imposed on the unsuccessful party. But a criminal charge involving scandal to reputation or the possible loss of life or liberty to the party charged does necessarily and naturally involve damage and in such a case damage to reputation will be presumed."

. Reference is also made to the case reported in **AIR 1992 Delhi 264** wherein Delhi High has with approval quoted the case of **Smt.Manijeh V/s. Sohrab Peshottan Kotwal, AIR 1949 Nagpur 273**, wherein it has been held that in an action for malicious prosecution, vindictive

damages are permissible. The learned Judge has referred to the law laid down in 10 Halsbury's Law of England, page 87, para 108 in this respect. He also cited **Lala Punnalal V/s.Kasturichand Ramaji, AIR 1946 Mad 147**, in which it has held that exemplary damages are consolatory rather than penal, resting upon the principle that, where there is malice, the mental pain caused to the plaintiff must be taken note of and a solatium awarded for it. It was held that the exemplary damages for torts can be awarded not only under English law but also under the Indian law in cases where the defendant has acted contumaciously."

26. In the light of the above observations in the aforesaid cases, it is clear that the defendants would be liable to pay damages to the plaintiff. No doubt, the plaintiff has not produced any documentary or oral evidence to prove damages suffered by him. However, where it is established that the prosecution is malicious, then damage to reputation will be presumed as held in the aforesaid case of privy council. Keeping in mind the above observations, defendants are held liable for the damage caused by them to the plaintiff by maliciously prosecuting him.

27. Accordingly, Damages are awarded as follows :-

1). General damages on account of loss of reputation and physical and mental torture caused to the plaintiff - Rs.1,00,000/-
(Rupees One lac only)

2) Pecuniary damages towards costs incurred in attending the criminal case at Kanpur and lawyers' fees and other misc.expenses - Rs. 10,000/-
(Rupees Ten thousand only)

28. Accordingly, there will be decree in favour of the plaintiff against the Defendants in the sum of Rs.1,10,000/- as aforesaid with interest thereon at the rate of 6% p.a. from the date hereof till payment or realization.

. Suit to stand disposed of. No order as to costs.

. Certified copy expedited.

(A.S. Aguiar, J.)